

HOUSE BILL No. 5485

September 29, 2009, Introduced by Reps. Lipton, Haase, Segal, Bauer, Byrnes, Crawford, Liss and Kowall and referred to the Committee on Judiciary.

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending section 1 of chapter XIIA (MCL 712A.1), as amended by
2001 PA 211.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIA

Sec. 1. (1) As used in this chapter:

(a) "Civil infraction" means that term as defined in section
113 of the revised judicature act of 1961, 1961 PA 236, MCL
600.113.

(B) "COMPETENCY EVALUATION" MEANS A COURT-ORDERED EXAMINATION
OF A JUVENILE DIRECTED TO DEVELOPING INFORMATION RELEVANT TO A
DETERMINATION OF HIS OR HER COMPETENCY TO PROCEED AT A PARTICULAR
STAGE OF A COURT PROCEEDING INVOLVING A JUVENILE WHO IS THE SUBJECT
OF A DELINQUENCY PETITION.

1 (C) "COMPETENCY HEARING" MEANS A HEARING TO DETERMINE WHETHER
2 A JUVENILE IS COMPETENT TO PROCEED.

3 (D) ~~(b)~~—"County juvenile agency" means that term as defined in
4 section 2 of the county juvenile agency act, 1998 PA 518, MCL
5 45.622.

6 (E) ~~(e)~~—"Court" means the family division of circuit court.

7 (F) ~~(d)~~—"Foreign protection order" means that term as defined
8 in section 2950h of the revised judicature act of 1961, 1961 PA
9 236, MCL 600.2950h.

10 (G) "INCOMPETENT TO PROCEED" MEANS THAT A JUVENILE LACKS A
11 REASONABLE DEGREE OF RATIONAL AS WELL AS FACTUAL UNDERSTANDING OF
12 THE PROCEEDING, IS UNABLE TO UNDERSTAND THE NATURE OR OBJECT OF THE
13 PROCEEDING, AND IS UNABLE TO ASSIST IN HIS OR HER DEFENSE IN A
14 MEANINGFUL WAY. A DETERMINATION OF JUVENILE INCOMPETENCY MUST BE
15 MADE IN LIGHT OF ADOLESCENT NORMS. ELEMENTS OF JUVENILE
16 INCOMPETENCY INCLUDE, BUT ARE NOT LIMITED TO, MENTAL OR PHYSICAL
17 DISORDER, MENTAL RETARDATION OR DEVELOPMENTAL DISABILITY, COGNITIVE
18 OR INTELLECTUAL DEFICIT, IMMATURITY, OR OTHER FUNCTIONAL DEFICIT.

19 (H) "JUVENILE" MEANS A PERSON WHO IS LESS THAN 17 YEARS OF AGE
20 WHO IS THE SUBJECT OF A DELINQUENCY PETITION.

21 (I) "LEAST RESTRICTIVE ENVIRONMENT" MEANS A SUPERVISED
22 COMMUNITY PLACEMENT, PREFERABLY A PLACEMENT WITH THE JUVENILE'S
23 PARENT, GUARDIAN, RELATIVE, OR A FACILITY OR CONDITIONS OF
24 TREATMENT THAT IS A RESIDENTIAL OR INSTITUTIONAL PLACEMENT ONLY
25 UTILIZED AS A LAST RESORT BASED ON THE BEST INTEREST OF THE
26 JUVENILE OR FOR REASONS OF PUBLIC SAFETY.

27 (J) "LICENSED CHILD CARING INSTITUTION" MEANS THAT A CHILD

1 CARING INSTITUTION AS DEFINED AND LICENSED UNDER 1973 PA 116, MCL
2 722.111 TO 722.128.

3 (K) ~~(e)~~—"MCI" means the Michigan children's institute created
4 and established by 1935 PA 220, MCL 400.201 to 400.214.

5 (I) ~~(f)~~—"Personal protection order" means a personal protection
6 order issued under section 2950 or 2950a of the revised judicature
7 act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, and includes
8 a valid foreign protection order.

9 (M) "QUALIFIED EXAMINER" MEANS A MENTAL HEALTH PROFESSIONAL AS
10 DEFINED IN SECTION 100B OF THE MENTAL HEALTH CODE, 1978 PA 258, MCL
11 330.1100B, WHO THE COURT DETERMINES HAS THE SKILLS AND TRAINING
12 NECESSARY TO CONDUCT THE COMPETENCY EVALUATION. THE SKILLS
13 NECESSARY TO CONDUCT THE COMPETENCY EVALUATION SHALL INCLUDE, BUT
14 ARE NOT LIMITED TO, KNOWLEDGE, SKILL, TRAINING, AND EXPERIENCE IN
15 ALL OF THE FOLLOWING:

16 (i) THE EVALUATION OR TREATMENT OF CHILDREN AND ADOLESCENTS
17 WITH SERIOUS EMOTIONAL DISTURBANCE, MENTAL ILLNESS, OR
18 DEVELOPMENTAL DISABILITIES.

19 (ii) CLINICAL UNDERSTANDING OF CHILD DEVELOPMENT AND ADOLESCENT
20 DEVELOPMENT.

21 (iii) FORENSIC EVALUATION PROCEDURES FOR JUVENILES THROUGH
22 FORMAL INSTRUCTION, PROFESSIONAL SUPERVISION, OR BOTH.

23 (iv) FAMILIARITY WITH COMPETENCY STANDARDS IN THIS STATE.

24 (N) "RESTORATION" MEANS THAT A JUVENILE IS NO LONGER
25 INCOMPETENT TO PROCEED.

26 (O) "SERIOUS MISDEMEANOR" MEANS THAT TERM AS DEFINED IN SECTION
27 61 OF THE WILLIAM VAN REGENMORTER CRIME VICTIM'S RIGHTS ACT, 1985 PA

1 87, MCL 780.811.

2 (P) ~~(g)~~—"Valid foreign protection order" means a foreign
3 protection order that satisfies the conditions for validity
4 provided in section 2950i of the revised judicature act of 1961,
5 1961 PA 236, MCL 600.2950i.

6 (2) Except as otherwise provided, proceedings under this
7 chapter are not criminal proceedings.

8 (3) This chapter shall be liberally construed so that each
9 juvenile coming within the court's jurisdiction receives the care,
10 guidance, and control, preferably in his or her own home, conducive
11 to the juvenile's welfare and the best interest of the state. If a
12 juvenile is removed from the control of his or her parents, the
13 juvenile shall be placed in care as nearly as possible equivalent
14 to the care that should have been given to the juvenile by his or
15 her parents.

16 Enacting section 1. This amendatory act does not take effect
17 unless all of the following bills of the 95th Legislature are
18 enacted into law:

19 (a) Senate Bill No. ____ or House Bill No. 5487(request no.
20 04135'09).

21 (b) Senate Bill No. ____ or House Bill No. 5488(request no.
22 04136'09).

23 (c) Senate Bill No. ____ or House Bill No. 5489(request no.
24 04137'09).

25 (d) Senate Bill No. ____ or House Bill No. 5486(request no.
26 04138'09).

27 (e) Senate Bill No. ____ or House Bill No. 5484(request no.

1 04139'09) .